

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the  
Commission's Own Motion to Evaluate  
Existing Practices and Policies for  
Processing Offset Rate Increases and  
Balancing Accounts in the Water  
Industry to Decide Whether New  
Processes are Needed

Rulemaking 01-12-009

**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES  
REGARDING THE DRAFT DECISION OF ADMINISTRATIVE LAW  
JUDGE ECONOME GRANTING THE PETITION FOR MODIFICATION  
OF DECISION 03-06-072**

Pursuant to Rules 77.2 – 77.7 of the Rules of Practice and Procedure of the California Public Utilities Commission, the Division of Ratepayer Advocates (“DRA”) hereby submits its opening comments on the Draft Decision (“DD”) of ALJ Econome that granted the Petition for Modification of Decision 03-06-072. The petition for modification of D.03-06-072 was filed by the California Water Association (“CWA”) in April of 2005.

Administrative Law Judge Econome’s DD is unnecessary, contrary to sound public policy, inimical to the interests of water ratepayers and both legally and factually erroneous. Instead of overturning a sound decision that has substantially benefited California’s water ratepayers<sup>1</sup>, the Commission should simply deny California Water Association’s (“CWA”) petition for modification.

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<sup>1</sup> See Appendix A.

## **I. THE DD IS NOT SUPPORTED BY EMPIRICAL EVIDENCE**

While unduly responsive to CWA's arguments, the DD was apparently prepared without examining what has actually been the Commission's experience with D.03-06-072.<sup>2</sup> For example, ratepayers in California Water Service Company's various districts had their rates lowered by \$3,090,226 between 2001 and 2003 as a result of the decision. Similarly, Southern California Water Company's (now Golden State Water Company) customers saved \$686,729 as a result of the decision. While these savings were significant, payment of those savings to the utilities' customers did not affect either utility's bond ratings. Indeed, both firms continue to earn at or above their authorized rates of return.

## **II. USING CURRENT FORECASTS IN NO GUARANTEE THAT EARNINGS ABOVE THE AUTHORIZED RATE ATTRIBUTABLE TO OFFSET BALANCING ACCOUNTS WILL NOT OCCUR**

The DD's contention that D.03-06-072 is unnecessary (because the Commission's new rate case plan ensures that more current forecast data is used for the earnings test), is belied by the refunds detailed above. (See DD, p. 6). Neither Cal Water nor Golden State had out-of-date sales forecast data before D.03-06-072 was issued because both water utilities had filed general rate case applications on a regular three year cycle over the past fifteen years. Despite the fact both Cal Water and Golden State had current sales forecast data, they nonetheless earned in excess of their authorized rate partly due to the operation of the offset balancing accounts. Those excess earnings that were attributable to the operation of offset balancing accounts were properly refunded to Cal Water's and Golden State's customers.

While the DD is correct that for some utilities such as Valencia Water Company, outdated sales forecast information may have contributed to excess

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<sup>2</sup> Partly this is due to the lack of actual evidence cited by CWA in its Petition for modification, contrary to Rule 47(b).

earnings during years past, outdated sales forecasts will no longer be a factor contributing to earnings in excess of the authorized rate of return. (Id.) However, excess offset balancing account of earnings do not arise solely because of outdated forecasts.

Cal Water's and Golden State's excess earnings in 2001-2003 demonstrate that excess earnings occur even with contemporary sales forecasts. (See Appendix A.)

This result is not surprising. The Commission acknowledged the limitations of forecasts in Resolution W-4294 (issued November 29, 2001) where it stated "Estimates, no matter how carefully conceived are not perfect predictors." P. 14. Thus, the assurance the Commission expresses on page 7 of the DD: "We have more confidence in our forecasts and assumptions under a three-year rate case plan, where the Commission scrutinizes the forecasts and assumptions used in regular intervals." is misplaced. A number of factors contribute to earnings in excess of authorized rates including population and economic growth, weather and rainfall fluctuations, and the operation of offset balancing accounts.

The earnings figures cited above demonstrate that CWA's contention that the new rate case plan decision, D.04-06-018 did not "solve" the problem of excess offset balancing account earnings. Excess earnings occur even when current forecasts are used. Thus, Finding of Fact Number 6's statement of confidence in the Commission's forecasts and assumptions in a three year rate case cycle is misplaced and should not be the basis for overturning D.03-06-072 that has delivered substantial benefits of Class A water utilities without undermining the financial posture of California's water utilities.

### **III. CWA'S PETITION FOR MODIFICATION FAILED TO DEMONSTRATE THAT D.03-06-072 NEEDED TO BE CHANGED**

To a large extent, CWA's Petition for Modification failed to meet the test prescribed in Rule 47(b) of the Commission's Rules of Practice and Procedure,

i.e., stating concisely why D.03-06-072 needs to be modified. Much of CWA’s Petition consists of self-serving claims about the alleged implementation challenges Class A water utilities faced in complying with the decision, however, contrary to the requirements of Rule 47(b), much of CWA’s “evidence” of the need to modify the decision consists of extra-record material that does not contain the requisite verifications. Instead, CWA offers rhetoric about the “one-way” nature of D.03-06-072. (CWA Petition, p. 7) Similarly, the example CWA (Id. p. 8) cites of a utility relying on a well for marginal supply resulting in increased costs is hypothetical – not the type of evidence one needs to grant a Petition for modification under Rule 47(b). Under Rule 47(b) unverified information cannot be relied upon to modify an existing Commission decision. Thus, the Petition for Modification should be rejected on that basis alone.

#### **IV. CONCLUSION**

Decision 03-06-072 delivered substantial benefits to the ratepayers of California’s Class A Water Companies (especially to companies) that do not have outdated sales forecast estimates without undermining the water utilities financial posture. CWA’s request to modify this sound decision is based on unverified information, speculation and rhetoric and cannot form the basis for overturning a sound Commission decision that has prevented offset balancing accounts from providing windfall

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earnings to water utilities. CWA's Petition should be denied and D.03-06-072 upheld.

Respectfully submitted,

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